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California Department of Corrections, et al

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PATRICK M. MCCOLLUM, et al.

Plaintiffs.

C

**CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.**

Defendants.

Case No.: C04-3339 CRB (EDL)

**STIPULATION AND [PROPOSED]
ORDER REGARDING THE
DEPARTMENT OF
CORRECTIONS AND
REHABILITATION'S SEARCHES
FOR LAB-PURGED DOCUMENTS**

Courtroom: 8, 19th Floor
Judge: The Honorable Charles
R. Breyer
Action Filed: August 16, 2004

24 On or about June 25, 2007, the Honorable Elizabeth D. Laporte issued a Stipulated Order
25 On Plaintiffs' Motion to Compel Responses to Exhaustion Discovery And For an Order to
26 Preserve Relevant Documents (Document 216) (hereafter "June 25, 2007 Order"). In relevant
27 part, the June 25, 2007 Order addressed inmate appeals files purged by the California
28 Department of Corrections & Rehabilitation's Inmate Appeals Branch ("IAB") in 2003, 2004,

1 2005 and 2006. (June 25, 2007 Order at ¶¶ 2, 3.) The June 25, 2007 Order provided that
 2 “Defendants shall search the IAB’s electronic records of exhausted appeals to identify
 3 potentially relevant Form 602 records that were purged” by IAB in 2004, 2005 and 2006. (June
 4 25, 2007 Order at ¶ 2.) Pursuant to the June 25, 2007 Order, Plaintiffs were to provide a list of
 5 “a reasonable number of search terms to be used to run the searches” to be performed by IAB.
 6 (*Ibid.*) After completing the searches, Defendants were to produce to Plaintiffs “copies of the
 7 Director’s Level Appeal Decision letters which pertain to Wiccan-Pagan inmates or inmates
 8 whose religion cannot be determined from the letter.” (*Ibid.*) Further, the parties were to meet
 9 and confer to reach a stipulation on whether Defendants would also have to perform searches of
 10 IAB’s electronic records relating to inmate appeals files purged by IAB in 2003. (*Id.* at ¶ 3.)

11 On or about July 24, 2007, Judge Laporte issued a subsequent “Order Re: Discovery
 12 Dispute” that addressed the foregoing searches by IAB (Document 226). The Order Re:
 13 Discovery Dispute provided in relevant part that Defendants were obligated to search IAB’s
 14 electronic records of exhausted appeals corresponding to the Form 602 records that were purged
 15 by IAB in 2003. (Order Re: Discovery Dispute at p. 1.) The Order Re: Discovery Dispute also
 16 provided that Plaintiffs were to provide Defendants with a list of 20 search terms, and that
 17 Defendants would use these 20 search terms to search IAB’s electronic records of exhausted
 18 appeals to identify potentially relevant Form 602 records that were purged by IAB in 2003,
 19 2004, 2005 and 2006. (*Id.* at p. 2.) The Order Re: Discovery Dispute also stated that Plaintiffs
 20 could move the Court for relief to designate a limited number of additional terms under certain
 21 conditions. (*Ibid.*)

22 Plaintiffs provided the list of 20 search terms to Defendants, and Defendants have
 23 completed their searches and produced the Director’s Level Appeal Decision letters in
 24 accordance with the June 25, 2007 Order and the Order Re: Discovery Dispute.

25 Plaintiffs have approached Defendant California Department of Corrections &
 26 Rehabilitation (“CDCR”) and asked for CDCR to perform additional searches. Specifically,
 27 Plaintiffs have asked CDCR to search IAB’s electronic records of exhausted appeals to identify
 28 further potentially relevant Form 602 records that were purged by IAB in 2003, 2004, 2005 and

1 2006, using seven additional search terms supplied by Plaintiffs: Celtic, Earth, Santeria, Thor,
 2 Clergy, Tarot, and Reverend.

3 Counsel for Plaintiffs and Defendants have met and conferred on Plaintiffs' request for
 4 CDCR to perform these additional searches. The parties agreed that if CDCR voluntarily
 5 performs these additional searches, then Plaintiffs will not seek any further searches pursuant to
 6 the Court's June 25, 2007 Order and Order Re: Discovery Dispute. The parties further agreed
 7 that if CDCR voluntarily performs these additional searches, then those searches will also satisfy
 8 any and all further obligations that CDCR may have to respond to the California Public Records
 9 Act ("CPRA") requests that Plaintiffs have served on CDCR.

10 Now, therefore, Counsel for Plaintiffs and Defendants hereby stipulate as follows:

11
 12 1. CDCR will search IAB's electronic records of exhausted appeals to identify
 13 further potentially relevant Form 602 records that were purged by IAB in 2003, 2004, 2005 and
 14 2006, using the following seven additional search terms: Celtic, Earth, Santeria, Thor, Clergy,
 15 Tarot, and Reverend.

16 2. CDCR shall have until December 17, 2007 to perform these additional searches
 17 and produce to Plaintiffs copies of the resulting Director's Level Appeal Decision letters that
 18 pertain to Wiccan-Pagan inmates or inmates whose religion cannot be determined from the letter.

19 3. Plaintiffs will not seek any further searches pursuant to Plaintiffs' Motion to
 20 Compel Responses to Exhaustion Discovery and For Order to Preserve Relevant Documents, the
 21 Court's June 25, 2007 Order, and/or the Order Re: Discovery Dispute.

22 4. Plaintiffs agree that CDCR performing these additional searches and production
 23 also satisfies and meets any and all further obligations CDCR may have to respond to Plaintiffs'
 24 CPRA requests.

25 5. This Stipulation is without prejudice to Plaintiffs' right to request, in merits
 26 discovery, documents relating to relevant Director's Level Appeal Decision letters.

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1 6. This Stipulation is without prejudice to Plaintiffs' right to seek evidentiary or
2 other sanctions in this action, as permitted by law.

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4 **IT IS SO STIPULATED.**

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6 Dated: November 7, 2007

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8 EDMUND G. BROWN JR.
9 Attorney General of the State of California

10 By: /s/Joshua C. Irwin

11

12 Joshua C. Irwin
13 Counsel for Defendants

14 Dated: November 7, 2007

15 JONES DAY

16 By: /s/Elaine Wallace

17

18 Elaine Wallace
19 Counsel for Plaintiffs

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21 Dated: _____
22 November 8, 2007

